

____.B. NO. _____

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to create equity
2 between the rights and benefits afforded to Hawaii's employees
3 and the fiscal needs of Hawaii's employers. This bill seeks to
4 ensure the stability of the State of Hawaii's workers'
5 compensation system and to protect it from experiencing the same
6 crippling hardships faced by other states.

7 Hawaii's workers' compensation system is broken. National
8 organizations have graded Hawaii's workers' compensation system
9 an "F", noting that Hawaii's system is moving from "bad to
10 worse." Hawaii's businesses are paying entirely too much for
11 workers' compensation insurance.

12 A recent national study ranked Hawaii third highest in the
13 entire nation in premiums, with Hawaii's employers paying on
14 average \$3.48 for every \$100 they pay in wages. California and
15 Florida, which are ranked number one and two for having the
16 highest premiums have saved their system by making necessary
17 reforms. Hawaii's local employers have seen their workers'

____.B. NO.____

1 compensation insurance premiums doubled and tripled in the last
2 five years. AM Best reported that premiums in Hawaii on an
3 average, increased twenty-four percent in 2003. Hawaii's
4 workers' compensation system has created a system where insurance
5 carriers are forced to stop insuring a company as soon as the
6 first workers' compensation claim is filed.

7 Workers' compensation reform remains the number one issue
8 for Hawaii's local businesses.

9 SECTION 2. Chapter 386, Hawaii Revised Statutes, is
10 amended by adding to Part III, four new sections to be
11 appropriately designated and to read as follows:

12 **"§386-A Workers' compensation insurance fraud in the first**
13 **degree.** (a) A person commits the offense of workers'

14 compensation insurance fraud in the first degree if the person
15 intentionally or knowingly violates section 386-98 and where the
16 value of the coverage, benefits, recovery, or compensation
17 obtained or attempted to be obtained or denied or attempted to
18 be denied exceeds \$20,000.

19 (b) Workers' compensation insurance fraud in the first
20 degree is a class B felony.

21 (c) For the purpose of this section, "intentionally" and
22 "knowingly" have the meanings given in section 702-206.

____.B. NO.____

1 **§386-B Workers' compensation insurance fraud in the second**
2 **degree.** (a) A person commits the offense of workers'
3 compensation insurance fraud in the second degree if the person
4 intentionally or knowingly violates section 386-98 and where the
5 value of the coverage, benefits, recovery, or compensation
6 obtained or attempted to be obtained or denied or attempted to
7 be denied exceeds \$300.

8 (b) Workers' compensation insurance fraud in the second
9 degree is a class C felony.

10 (c) For the purpose of this section, "intentionally" and
11 "knowingly" have the meanings given in section 702-206.

12 **§386-C Workers' compensation insurance fraud in the third**
13 **degree.** (a) A person commits the offense of workers'
14 compensation insurance fraud in the third degree if the person
15 intentionally or knowingly violates section 386-98 and where the
16 value of the coverage, benefits, recovery, or compensation
17 obtained or attempted to be obtained or denied or attempted to
18 be denied is \$300 or less.

19 (b) Workers' compensation insurance fraud in the third
20 degree is a misdemeanor.

21 (c) For the purpose of this section, "intentionally" and
22 "knowingly" have the meanings given in section 702-206.

1 §386-D Workers' compensation insurance fraud;
2 administrative penalties. (a) In lieu of or in addition to the
3 criminal penalties set forth in sections 386-A, 386-B, or 386-C,
4 a person who commits workers' compensation insurance fraud as
5 defined under section 386-98 may be subject to the
6 administrative penalties of restitution of the value of benefits
7 or payments fraudulently received under this chapter, whether
8 received from an employer, insurer, or the special compensation
9 fund, to be made to the employer, insurer, or the special
10 compensation fund from which the compensation was received, and
11 one or more of the following:

12 (1) A fine of not more than \$10,000 for each violation;
13 (2) Suspension or termination of benefits in whole or in
14 part;
15 (3) Suspension or disqualification from providing medical
16 care or services, vocational rehabilitation services,
17 or any other service rendered for payment under this
18 chapter;
19 (4) Suspension or termination of payments for medical,
20 vocational rehabilitation, or any other service
21 rendered under this chapter;

____.B. NO.____

1 (5) Recoupment by the insurer, employer, or special
2 compensation fund of all payments made for medical
3 care, medical services, vocational rehabilitation
4 services, and all other services rendered for payment
5 under this chapter; or

6 (6) Reimbursement of attorney's fees and costs of the
7 party or parties defrauded.

8 (b) With respect to the administrative penalties set forth
9 in subsection (a), no penalty shall be imposed except upon
10 issuance of a written complaint that specifically alleges a
11 violation of this section occurring within two years of the date
12 of that complaint. A copy of the complaint specifying the
13 alleged violation shall be served upon the person charged. The
14 director or board shall issue, where an administrative penalty
15 is ordered, a written decision stating all findings following a
16 hearing held not fewer than twenty days after the service of a
17 written complaint on the person charged. Any person aggrieved
18 by the decision may appeal the decision under sections 386-87
19 and 386-88.

20 (c) For the purpose of this section, "knowingly" means
21 that a person has actual knowledge of the facts; and

____.B. NO.____

1 (1) Acts in deliberate ignorance of the truth or falsity
2 of the facts; or

3 (2) Acts in reckless disregard of the truth or falsity of
4 the facts.

5 No proof of specific intent to defraud is required to prove that
6 a person acted "knowingly" with respect to the facts."

7 Section 3. Section 386-1, Hawaii Revised Statutes, is
8 amended by adding a new definition to be appropriately inserted
9 and to read as follows:

10 "Attending physician" means a doctor or physician who is
11 licensed to practice medicine pursuant to chapters 453-4 and
12 osteopathy pursuant to chapter 460, or dentistry pursuant to
13 chapter 448, or podiatry pursuant to chapter 463e, who is
14 primarily responsible for the treatment of a work related
15 injury."

16 SECTION 4. Section 386-1, Hawaii Revised Statutes, is
17 amended by amending the definitions of "employment" and
18 "physician" to read as follows:

19 "Employment" means any service performed by an individual
20 for another person under any contract of hire or apprenticeship,
21 express or implied, oral or written, whether lawfully or
22 unlawfully entered into. It includes service of public

____.B. NO.____

1 officials, whether elected or under any appointment or contract
2 of hire express or implied.

3 "Employment" does not include the following service:

4 (1) Service for a religious, charitable, educational, or
5 nonprofit organization if performed in a voluntary or
6 unpaid capacity;

7 (2) Service for a religious, charitable, educational, or
8 nonprofit organization if performed by a recipient of
9 aid therefrom and the service is incidental to or in
10 return for the aid received;

11 (3) Service for a school, college, university, college
12 club, fraternity, or sorority if performed by a
13 student who is enrolled and regularly attending
14 classes and in return for board, lodging, or tuition
15 furnished, in whole or in part;

16 (4) Service performed by a duly ordained, commissioned, or
17 licensed minister, priest, or rabbi of a church in the
18 exercise of the minister's, priest's, or rabbi's
19 ministry or by a member of a religious order in the
20 exercise of nonsecular duties required by the order;

21 (5) Service performed by an individual for another person
22 solely for personal, family, or household purposes if

____.B. NO.____

1 the cash remuneration received is less than \$225
2 during the current calendar quarter and during each
3 completed calendar quarter of the preceding twelve-
4 month period;

5 (6) Domestic, which includes attendant care, and day care
6 services authorized by the department of human
7 services under the Social Security Act, as amended,
8 performed by an individual in the employ of a
9 recipient of social service payments;

10 (7) Service performed without wages for a corporation
11 without employees by a corporate officer in which the
12 officer is at least a twenty-five per cent
13 stockholder;

14 (8) Service performed by an individual for a corporation
15 if the individual owns at least fifty per cent of the
16 corporation; provided that no employer shall require
17 an employee to incorporate as a condition of
18 employment; ~~and~~

19 (9) Service performed by an individual for another person
20 as a real estate salesperson or as a real estate
21 broker, if all the service performed by the individual

1 for the other person is performed for remuneration
2 solely by way of commission[~~+~~];

3 (10) Service performed by a member of a limited liability
4 company if the member is an individual and has a
5 distributional interest, as defined in chapter 428, of
6 at least fifty per cent in the company; provided that
7 no employer shall require an employee to form a
8 limited liability company as a condition of
9 employment;

10 (11) Service performed by a partner of a partnership, as
11 defined in chapter 425, if the partner is an
12 individual; provided that no employer shall require an
13 employee to become a partner as a condition of
14 employment;

15 (12) Service performed by a partner of a limited liability
16 partnership, if the partner is an individual and has a
17 transferable interest, as defined in section 425-127
18 in the partnership of at least fifty per cent;
19 provided that no employer shall require an employee to
20 form a limited liability partnership as a condition of
21 employment; and

22 (13) Service performed by a sole proprietor.

____.B. NO.____

1 As used in this ~~[paragraph]~~ definition, "religious, charitable,
2 educational, or nonprofit organization" means a corporation,
3 unincorporated association, community chest, fund, or foundation
4 organized and operated exclusively for religious, charitable, or
5 educational purposes, no part of the net earnings of which inure
6 to the benefit of any private shareholder or individual.

7 "Physician" includes a doctor of medicine, a dentist, [~~a~~
8 ~~chiropractor,~~] an osteopath, [~~a naturopath, a psychologist, an~~
9 ~~optometrist,~~] and a podiatrist. There shall be no more than one
10 physician who acts as the attending physician. Treatment by
11 other physicians or health care providers may be allowed and
12 referred by the attending physician, if the attending physician
13 determines the employee's injury or illness involves more than
14 one body system and requires multidisciplinary care or is so
15 severe or complex that the services of more than one qualified
16 health care provider are required, provided that the attending
17 physician does not have a financial interest in the qualified
18 health care provider providing services. "Financial interest"
19 means an ownership or investment interest through debt, equity,
20 or any other means.

21 SECTION 5. Section 386-3, Hawaii Revised Statutes, is
22 amended by amending subsection (c) to read as follows:

____.B. NO.____

1 "(c) ~~[A claim for mental stress resulting solely from~~
2 ~~disciplinary action taken in good faith by the employer shall~~
3 ~~not be allowed; provided that if a collective bargaining~~
4 ~~agreement or other employment agreement specifies a different~~
5 ~~standard than good faith for disciplinary actions, the standards~~
6 ~~set in the collective bargaining agreement or other employment~~
7 ~~agreement shall be applied in lieu of the good faith standard.~~
8 ~~For purposes of this subsection, the standards set in the~~
9 ~~collective bargaining agreement or other employment agreement~~
10 ~~shall be applied in any proceeding before the department, the~~
11 ~~appellate board, and the appellate courts.] No compensation~~
12 shall be allowed for mental injury or illness, or the physical
13 manifestation brought on by mental injury or illness proximately
14 caused by personnel actions taken in good faith, including
15 disciplinary action, counseling, work evaluation or criticism,
16 job transfer, layoff, demotion, suspension, termination,
17 retirement."

18 SECTION 5. Section 386-21, Hawaii Revised Statutes, is
19 amended by amending subsection (b) and (c) to read as follows:

20 "(b) Whenever medical care is needed, the employer, or its
21 insurance carrier, may mandate the injured employee to select

____.B. NO.____

1 from an employer designated healthcare provider network, to
2 provide medical services for the first one-hundred and twenty
3 days of medical treatment, unless the employee provides the
4 employer, or its insurance carrier, with the name and address of
5 the employee's family physician, who must be qualified as an
6 attending physician authorized to treat injuries covered by this
7 chapter, from whom, they will receive healthcare treatment in
8 the event of a workers' compensation injury. Further:

9 (1) In the absence of any employer designated health care
10 provider network or employee designated qualified
11 family physician, which shall be furnished upon date
12 of employment or twelve months prior to date of
13 injury, the injured employee may select any attending
14 physician [or surgeon] who is practicing on the island
15 where the injury was incurred to render such care. If
16 the services of a specialist are indicated, the
17 employee may select any such attending physician [or
18 surgeon] practicing in the State. The director may
19 authorize the selection of a specialist practicing
20 outside the State where no comparable medical
21 attendance within the State is available. Upon
22 procuring the services of such attending physician [or

____.B. NO.____

1 ~~surgeon~~], the injured employee shall give proper
2 notice of the employee's selection to the employer
3 within a reasonable time after the beginning of the
4 treatment. If for any reason during the period when
5 medical care is needed, the employee wishes to change
6 to another attending physician [~~or surgeon~~], the
7 employee may do so in accordance with rules prescribed
8 by the director. If the employee is unable to select
9 [a] an attending physician [~~or surgeon~~] and the
10 emergency nature of the injury requires immediate
11 medical attendance, or if the employee does not desire
12 to select [a] an attending physician [~~or surgeon~~] and
13 so advises the employer, the employer shall select the
14 attending physician [~~or surgeon~~]. Such selection,
15 however, shall not deprive the employee of the
16 employee's right of subsequently selecting [a] an
17 attending physician [~~or surgeon~~] for continuance of
18 needed medical care[~~+~~];

19 (2) Only after one hundred twenty days of treatment for a
20 work injury, may an employee utilizing an employer
21 designated healthcare network opt to change attending
22 physicians for any reason;

____.B. NO.____

1 (3) Fifty per cent of the employer designated healthcare
2 provider network must contain qualified healthcare
3 providers who reside on the island where the injured
4 employee resides; and

5 (4) The network shall contain qualified healthcare
6 providers who are primarily engaged in the treatment
7 of occupational injuries and healthcare providers
8 primarily engaged in the treatment of nonoccupational
9 injuries. The goal shall be at least twenty-five per
10 cent of physicians primarily engaged in the treatment
11 of nonoccupational injuries. The director shall
12 encourage the integration of occupational and
13 nonoccupational providers. The number of physicians
14 in the healthcare provider network shall be sufficient
15 to enable treatment for injuries or conditions to be
16 provided in a timely manner. The healthcare provider
17 network shall include an adequate number and type of
18 physicians, or other providers, to treat common
19 injuries experienced by injured employees based on the
20 type of occupation or industry in which the employee
21 is engaged, and the geographic area where the
22 employees are employed.

____.B. NO.____

1 (5) Medical treatment for injuries shall be readily
2 available at reasonable times to all employees. To
3 the extent feasible, all medical treatment for
4 injuries shall be readily accessible to all employees.

5 With respect to availability and accessibility of
6 treatment, the director shall consider the needs of
7 rural areas, specifically those in which health
8 facilities are located at least thirty miles apart.

9 (6) The employer, or its insurance carrier, shall submit a
10 plan for the healthcare provider network to the
11 director for approval. The director shall approve the
12 plan if the director determines that the plan meets
13 the requirements of this section.

14 (7) If the employer, or its insurance carrier, meets the
15 requirements of this section, the director may not
16 withhold approval or disapprove an employer's, or its
17 insurance carrier, healthcare provider network based
18 solely on the selection of providers.

19 (8) All treatment provided shall be provided in accordance
20 with the medical treatment utilization guidelines
21 established by the director.

____.B. NO.____

1 (9) No person other than a qualified healthcare provider
2 under this chapter, who is competent to evaluate the
3 specific clinical issues involved in the medical
4 treatment services, when these services are within the
5 scope of the healthcare providers practice, may
6 modify, delay, or deny requests for authorization of
7 medical treatment.

8 (c) The liability of the employer for medical care,
9 services, and supplies shall be limited to the charges computed
10 as set forth in this section. The director shall make
11 determinations of the charges and adopt fee schedules based upon
12 those determinations. Effective January 1, 1997, and for each
13 succeeding calendar year thereafter, the charges shall not
14 exceed one hundred ten per cent of fees prescribed in the
15 Medicare Resource Based Relative Value Scale system applicable
16 to Hawaii as prepared by the United States Department of Health
17 and Human Services, except as provided in this subsection. The
18 rates or fees provided for in this section shall be adequate to
19 ensure at all times the standard of services and care intended
20 by this chapter to injured employees.

21 If the director determines that an allowance under the
22 medicare program is not reasonable, or if a medical treatment,

____.B. NO.____

1 accommodation, product, or service existing as of June 29, 1995,
2 is not covered under the medicare program, the director may, at
3 any time, establish an additional fee schedule or schedules not
4 exceeding the prevalent charge for fees for services actually
5 received by providers of health care services to cover charges
6 for that treatment, accommodation, product, or service. If no
7 prevalent charge for a fee for service has been established for
8 a given service or procedure, the director shall adopt a
9 reasonable rate that shall be the same for all providers of
10 health care services to be paid for that service or procedure.

11 The director shall update the schedules required by this
12 section every three years or annually, as required. The updates
13 shall be based upon:

14 (1) Future charges or additions prescribed in the Medicare
15 Resource Based Relative Value Scale system applicable
16 to Hawaii as prepared by the United States Department
17 of Health and Human Services; or

18 (2) A statistically valid survey by or submitted to the
19 director of prevalent charges for fees for services
20 actually received by providers of health care services
21 or based upon the information provided to the director

____.B. NO.____

1 by the appropriate state agency having access to
2 prevalent charges for medical fee information.

3 When a dispute exists between an insurer or self-insured
4 employer and a medical service provider regarding the amount of
5 a fee for medical services, the director may resolve the dispute
6 in a summary manner as the director may prescribe; provided that
7 a provider shall not charge more than the provider's private
8 patient charge for the service rendered."

9 SECTION 6. Section 386-22, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§386-22 Artificial member and other aids.** Where an
12 injury results in the amputation of an arm, hand, leg, or foot,
13 or the enucleation of an eye, or the loss of natural or
14 artificial teeth, or the loss of vision which may be partially
15 or wholly corrected by the use of lenses, the employer shall
16 furnish an artificial member to take the place of each member
17 lost and, in the case of correctible loss of vision, a set of
18 suitable glasses. Where it is certified to be necessary by [~~a~~
19 ~~licensed~~] the attending physician [~~or surgeon~~] chosen by
20 agreement of the employer and the employee, the employer shall
21 furnish such other aids, appliances, apparatus, and supplies as
22 are required to cure or relieve the effects of the injury. When

____.B. NO.____

1 [~~a licensed~~] the attending physician [~~or surgeon~~], chosen as
2 above, certifies that it is necessitated by ordinary wear, the
3 employer shall repair or replace such artificial members, aids,
4 appliances, or apparatus.

5 Where an employee suffers the loss of or damage to any
6 artificial member, aid, appliance, or apparatus by accident
7 arising out of and in the course of the employee's employment,
8 the employer shall repair or replace the member, aid, appliance,
9 or apparatus whether or not the same was furnished initially by
10 the employer.

11 The liability of the employer for artificial members, aids,
12 appliances, apparatus, or supplies as is imposed by this section
13 shall be limited to such charges as prevail in the same
14 community for similar equipment of a person of a like standard
15 of living when the equipment is paid for by that person and
16 shall be subject to the deductible under section 386-100."

17 SECTION 7. Section 386-25, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§386-25 Vocational rehabilitation.** (a) The purposes of
20 vocational rehabilitation are to restore an injured worker's
21 earning capacity as nearly as possible to that level which the
22 worker was earning at the time of injury and to return the

____.B. NO.____

1 injured worker to suitable work in the active labor force as
2 quickly as possible in a cost-effective manner.

3 (b) The director may refer employees who may have or have
4 suffered permanent disability as a result of work injuries and
5 who in the director's opinion can be vocationally rehabilitated
6 to the department of human services or to private providers of
7 rehabilitation services for vocational rehabilitation services
8 that are feasible. A referral shall be made upon recommendation
9 of the rehabilitation unit established under section 386-71.5
10 and after the employee has been deemed physically able to
11 participate in rehabilitation by the employee's attending
12 physician.

13 The unit shall include appropriate professional staff and
14 shall have the following duties and responsibilities:

- 15 (1) To review and approve rehabilitation plans developed
16 by certified providers of rehabilitation services,
17 whether they be private or public;
- 18 (2) To adopt rules consistent with this section which
19 shall expedite and facilitate the identification,
20 notification, and referral of industrially injured
21 employees to rehabilitation services, and establish

____.B. NO.____

1 minimum standards for providers providing
2 rehabilitation services under this section;
3 (3) To certify private and public providers of
4 rehabilitation services meeting the minimum standards
5 established under paragraph (2); and
6 (4) To enforce the implementation of rehabilitation plans.
7 (c) The director shall approve a rehabilitation plan as
8 meeting fully the employer's obligation under this section that
9 includes a program modifying the employee's job through changes
10 to the work process or function, providing alternative work
11 within the employee's physical limitations, or locating
12 reemployment with a new employer using the employee's existing
13 job skills. Notwithstanding subsection (e), the employee's
14 refusal to accept a plan under this subsection shall terminate
15 compensation for temporary total disability.
16 [~~(e)~~] (d) Enrollment in a rehabilitation plan or program
17 shall not be mandatory and the approval of a proposed
18 rehabilitation plan or program by the injured employee shall be
19 required. [~~The injured employee may select a certified provider~~
20 ~~of rehabilitation services. Both the certified provider and the~~
21 ~~injured employee, within a reasonable time after initiating~~
22 ~~rehabilitation services, shall give proper notice of selection~~

____.B. NO.____

1 ~~to the employer.]~~ All plans developed under this subsection by
2 a certified provider of rehabilitation services, who shall be
3 chosen and agreed upon by both the employee and employer, shall
4 be subject to a performance review for effectiveness before
5 implementation and twenty-six weeks after said implementation.
6 No plan for rehabilitation shall extend, nor shall any extension
7 be granted, beyond the initial twenty-six weeks without a
8 written performance review. The attending physician, certified
9 vocational rehabilitation counselor and employer, in
10 consultation with the employee or employee's representative, if
11 applicable, shall conduct the performance review to ensure that
12 the plan is likely to result in return to suitable gainful
13 employment. In instances where there is no agreement, the
14 director shall make the final determination for implementation
15 and any extension of an additional twenty-six weeks.

16 ~~[(d)]~~ (e) An injured employee's enrollment in a
17 rehabilitation plan or program shall not affect the employee's
18 entitlement to temporary total disability compensation if the
19 employee earns no wages during the period of enrollment. If the
20 employee receives wages for work performed under the plan or
21 program, the employee shall be entitled to temporary total
22 disability compensation in an amount equal to the difference

____.B. NO.____

1 between the employee's average weekly wages at the time of
2 injury and the wages received under the plan or program, subject
3 to the limitations on weekly benefit rates prescribed in section
4 386-31(a). The employee shall not be entitled to such
5 compensation for any week during this period where the wages
6 equal or exceed the average weekly wages at the time of injury.

7 ~~[(e)]~~ (f) The director shall adopt rules for additional
8 living expenses necessitated by the rehabilitation program,
9 together with all reasonable and necessary vocational training.

10 ~~[(f)]~~ (g) If the rehabilitation unit determines that
11 vocational rehabilitation is not possible or feasible, it shall
12 certify such determination to the director.

13 ~~[(g)]~~ (h) The eligibility of any injured employee to
14 receive other benefits under this chapter shall in no way be
15 affected by the employee's entrance upon a course of vocational
16 rehabilitation as herein provided.

17 ~~[(h)]~~ (i) Vocational rehabilitation services for the
18 purpose of developing a vocational rehabilitation plan may be
19 approved by the director and the director may periodically
20 review progress in each case."

21 SECTION 8. Section 386-26, Hawaii Revised Statutes, is
22 amended to read as follows:

____.B. NO.____

1 **"§386-26 Guidelines on frequency of treatment and**
2 **reasonable utilization of health care and services.** The
3 director shall issue guidelines for the frequency of treatment
4 and for reasonable utilization of medical care and services by
5 health care providers that are considered necessary and
6 appropriate under this chapter.

7 The guidelines shall be adopted pursuant to chapter 91 and
8 shall not interfere with the injured employee's rights to
9 exercise free choice of physicians [~~under~~] as prescribed in
10 section 386-21.

11 In addition, the director shall adopt updated medical fee
12 schedules referred to in section 386-21 and where deemed
13 appropriate shall establish separate fee schedules for services
14 of health care providers as defined in section 386-1 to become
15 effective no later than June 30, 1986, in accordance with
16 chapter 91."

17 SECTION 9. Section 386-31, Hawaii Revised Statutes, is
18 amended by amending subsection (b) to read as follows:

19 "(b) Temporary total disability. Where a work injury
20 causes total disability not determined to be permanent in
21 character, the employer, for the duration of the disability, but
22 not including the first three calendar days thereof, shall pay

____.B. NO.____

1 the injured employee a weekly benefit at the rate of sixty-six
2 and two-thirds per cent of the employee's average weekly wages,
3 subject to the limitations on weekly benefit rates prescribed in
4 subsection (a), or if the employee's average weekly wages are
5 less than the minimum weekly benefit rate prescribed in
6 subsection (a), at the rate of one hundred per cent of the
7 employee's average weekly wages.

8 The employer shall pay temporary total disability benefits
9 promptly as they accrue to the person entitled thereto without
10 waiting for a decision from the director, unless such right is
11 controverted by the employer in the employer's initial report of
12 industrial injury. The first payment of benefits shall become
13 due and shall be paid no later than on the tenth day after the
14 employer has been notified of the occurrence of the total
15 disability, and thereafter the benefits due shall be paid weekly
16 except as otherwise authorized pursuant to section 386-53.

17 The payment of such benefits shall only be terminated upon
18 order of the director or if the employee is able to resume
19 work[-], if maximum medical improvement has been reached, if the
20 employee has filed a false claim, or upon payment of one-
21 hundred-four weeks of benefits, whichever comes first. In the
22 event that temporary total disability benefits are paid for one-

____.B.NO.____

1 hundred and four weeks, the director may order a continuation of
2 benefits after a hearing in which by preponderance of evidence
3 supports a finding that maximum medical improvement has not been
4 achieved or the employee is enrolled in a vocational
5 rehabilitation plan, or that the injury is deteriorating. Sixty
6 days prior to the termination of benefits, the employee can
7 request a hearing to petition that benefits not be terminated.

8 When the employer is of the opinion that temporary total
9 disability benefits should be terminated because the injured
10 employee is able to resume work, the employer shall notify the
11 employee and the director in writing of an intent to terminate
12 such benefits at least two weeks prior to the date when the last
13 payment is to be made. The notice shall give the reason for
14 stopping payment and shall inform the employee that the employee
15 may make a written request to the director for a hearing if the
16 employee disagrees with the employer. Upon receipt of the
17 request from the employee, the director shall conduct a hearing
18 as expeditiously as possible and render a prompt decision as
19 specified in section 386-86.

20 An employer or insurance carrier who fails to comply with
21 this section shall pay not more than \$2,500 into the special

____.B. NO.____

1 compensation fund upon the order of the director, in addition to
2 other penalties prescribed in section 386-92.

3 (1) In any case where the director determines based upon a
4 review of medical records and reports and other
5 relevant documentary evidence that an injured
6 ~~[employee's medical condition may be stabilized]~~
7 employee has reached maximum medical improvement and
8 the employee is unable to return to the employee's
9 regular job, the director shall issue a preliminary
10 decision regarding the claimant's entitlement and
11 limitation to benefits and rights under Hawaii's
12 workers' compensation laws. The preliminary decision
13 shall be sent to the affected employee and the
14 employee's designated representative and the employer
15 and the employer's designated representative and shall
16 state that any party disagreeing with the director's
17 preliminary findings of ~~[medical stabilization]~~
18 maximum medical improvement and work limitations may
19 request a hearing within twenty days of the date of
20 the decision. The director shall be available to
21 answer any questions during the twenty-day period from
22 the injured employee and affected employer. If

____.B. NO.____

1 neither party requests a hearing challenging the
2 director's finding the determination shall be deemed
3 accepted and binding upon the parties. In any case
4 where a hearing is held on the preliminary findings,
5 any person aggrieved by the director's decision and
6 order may appeal under section 386-87.

7 A preliminary decision of the director shall
8 inform the injured employee and the employer of the
9 following responsibilities, benefits, and limitations
10 on vocational rehabilitation benefits which are
11 designed to facilitate the injured employee's early
12 return to suitable gainful employment:

13 (A) That the injured employee may invoke the
14 employee's rights under section 378-2, 378-32, or
15 386-142, or all of them, in the event of unlawful
16 discrimination or other unlawful employment
17 practice by the employer.

18 (B) That after termination of temporary total
19 disability benefits an injured employee who
20 resumes work may be entitled to permanent partial
21 disability benefits, which if awarded, shall be

____.B. NO.____

1 paid regardless of the earnings or employment

2 status of the disabled employee at the time.

3 (2) In any case in which the rehabilitation unit

4 determines that an injured employee is not a feasible

5 candidate for rehabilitation and that the employee is

6 unable to resume the employee's regular job, it shall

7 promptly certify the same to the director. Soon

8 thereafter, the director shall conduct a hearing to

9 determine whether the injured employee remains

10 temporarily totally disabled, or whether the employee

11 is permanently partially disabled, or permanently

12 totally disabled."

13 SECTION 10. Section 386-98, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§386-98 [~~Fraud violations and penalties.~~] Workers'
16 compensation insurance fraud. (a) [~~A fraudulent insurance act,~~
17 ~~under this chapter, shall include acts or omissions committed by~~
18 ~~any person who intentionally or~~] A person commits the offense of
19 workers' compensation insurance fraud if the person knowingly
20 [acts or omits to act so as] misrepresents or conceals a
21 material fact, opinion, or intention in order to obtain
22 [benefits, deny benefits, obtain benefits compensation for

____.B. NO.____

1 ~~services provided, or provides legal assistance or counsel to~~
2 ~~obtain benefits or recovery through fraud or deceit by doing] or~~
3 attempts to obtain or to deny coverage, benefits, recovery, or
4 compensation for services, or provides legal assistance or
5 counsel to obtain benefits through fraud or deceit if the person
6 does any of the following:

- 7 (1) Presenting or causing to be presented any false
8 information on an application;
- 9 (2) Presenting or causing to be presented any false or
10 fraudulent claim for the payment of a loss;
- 11 (3) Presenting multiple claims for the same loss or
12 injury, including presenting multiple claims to more
13 than one insurer, except when these multiple claims
14 are appropriate and each insurer is notified
15 immediately in writing of all other claims and
16 insurers;
- 17 (4) Making or causing to be made any false or fraudulent
18 claim for payment or denial of a health care benefit;
- 19 (5) Submitting a claim for a health care benefit that was
20 not used by, or on behalf of, the claimant;
- 21 (6) Presenting multiple claims for payment of the same
22 health care benefit;

____.B. NO.____

(7) Presenting for payment any undercharges for health care benefits on behalf of a specific claimant unless any known overcharges for health care benefits for that claimant are presented for reconciliation at that same time;

(8) Misrepresenting or concealing a material fact;

(9) Fabricating, altering, concealing, making a false entry in, or destroying a document;

(10) Making or causing to be made any false or fraudulent statements with regard to entitlements or benefits, with the intent to discourage an injured employee from claiming benefits or pursuing a workers' compensation claim; or

(11) Making or causing to be made any false or fraudulent statements or claims by, or on behalf of, a client with regard to obtaining legal recovery or benefits.

(b) ~~[No]~~ A person, who is an employer [shall-wilfully make] or employer's representative, commits the offense of workers' compensation insurance fraud if the person knowingly makes a false statement or representation to avoid the impact of past adverse claims experience through change of ownership,

____.B. NO.____

1 control, management, or operation to directly obtain any
2 workers' compensation insurance policy.

3 (c) It shall be [~~inappropriate~~] unlawful for any
4 discussion on benefits, recovery, or settlement to include the
5 threat or implication of criminal prosecution. Any threat or
6 implication shall be immediately referred in writing to:

7 (1) The state bar if attorneys are in violation;

8 (2) The insurance commissioner if an insurer or insurance
9 company personnel are in violation; or

10 (3) The regulated industries complaints office if health
11 care providers are in violation, for investigation
12 and, if appropriate, disciplinary action.

13 [~~(d) An offense under subsections (a) and (b) shall~~
14 ~~constitute a:~~

15 ~~(1) Class C felony if the value of the moneys obtained or~~
16 ~~denied is not less than \$2,000;~~

17 ~~(2) Misdemeanor if the value of the moneys obtained or~~
18 ~~denied is less than \$2,000; or~~

19 ~~(3) Petty misdemeanor if the providing of false~~
20 ~~information did not cause any monetary loss.~~

21 ~~Any person subject to a criminal penalty under this section~~
22 ~~shall be ordered by a court to make restitution to an insurer or~~

____.B. NO.____

1 ~~any other person for any financial loss sustained by the insurer~~
2 ~~or other person caused by the fraudulent act.~~

3 ~~(c) In lieu of the criminal penalties set forth in~~
4 ~~subsection (d), any person who violates subsections (a) and (b)~~
5 ~~may be subject to the administrative penalties of restitution of~~
6 ~~benefits or payments fraudulently received under this chapter,~~
7 ~~whether received from an employer, insurer, or the special~~
8 ~~compensation fund, to be made to the source from which the~~
9 ~~compensation was received, and one or more of the following:~~

10 ~~(1) A fine of not more than \$10,000 for each violation;~~

11 ~~(2) Suspension or termination of benefits in whole or in~~
12 ~~part;~~

13 ~~(3) Suspension or disqualification from providing medical~~
14 ~~care or services, vocational rehabilitation services,~~
15 ~~and all other services rendered for payment under this~~
16 ~~chapter;~~

17 ~~(4) Suspension or termination of payments for medical,~~
18 ~~vocational rehabilitation and all other services~~
19 ~~rendered under this chapter;~~

20 ~~(5) Recoupment by the insurer of all payments made for~~
21 ~~medical care, medical services, vocational~~

____.B. NO.____

1 ~~rehabilitation services, and all other services~~
2 ~~rendered for payment under this chapter; or~~
3 ~~(6) Reimbursement of attorney's fees and costs of the~~
4 ~~party or parties defrauded.~~

5 ~~(f) With respect to the administrative penalties set forth~~
6 ~~in subsection (e), no penalty shall be imposed except upon~~
7 ~~consideration of a written complaint that specifically alleges a~~
8 ~~violation of this section occurring within two years of the date~~
9 ~~of said complaint. A copy of the complaint specifying the~~
10 ~~alleged violation shall be served promptly upon the person~~
11 ~~charged. The director or board shall issue, where a penalty is~~
12 ~~ordered, a written decision stating all findings following a~~
13 ~~hearing held not fewer than twenty days after written notice to~~
14 ~~the person charged. Any person aggrieved by the decision may~~
15 ~~appeal the decision under sections 386-87 and 386-88.]~~

16 (d) This section shall not supersede any other law
17 relating to theft, fraud, or deception. Workers' compensation
18 insurance fraud may be prosecuted under this chapter or any
19 other applicable statute or common law and all penalties and
20 remedies shall be cumulative.

21 (e) In prosecutions for workers' compensation insurance
22 fraud or related offenses including theft in sections 708-830,

____.B. NO.____

1 708-830.5, 708-831, and 708-833, the offense charged shall be
2 considered an "offense an element of which is either fraud or
3 breach of fiduciary obligation" for the purposes of extending,
4 pursuant to section 701-108(3)(a), the time limitations for
5 prosecutions set forth in section 701-108.

6 (f) The insurance fraud investigations branch of the
7 department of commerce and consumer affairs shall investigate
8 and initiate legal proceedings to enforce workers' compensation
9 insurance fraud relating to both self-insured employers and
10 fully insured employers."

11 SECTION 11. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 12. This Act shall take effect upon approval.

14

15 INTRODUCED BY: _____

16 BY REQUEST

17

18